

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL GARCIA-GUIA,

Defendant.

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Case No. 3:07cr081

Case No. 3:13cv212

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JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING SECOND SUPPLEMENTAL REPORT  
AND RECOMMENDATIONS (DOC. #976) IN THEIR ENTIRETY AND  
OVERRULING DEFENDANT'S OBJECTIONS THERETO (DOC. #996);  
DEFENDANT'S SECTION 2255 MOTION DISMISSED WITH PREJUDICE  
AS TIME-BARRED, HIS CLAIM OF EQUITABLE TOLLING NOT  
WITHSTANDING; JUDGMENT TO ENTER ACCORDINGLY; CERTIFICATE  
OF APPEALABILITY AND ANTICIPATED REQUEST TO APPEAL *IN*  
*FORMA PAUPERIS* DENIED; TERMINATION ENTRY

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Pursuant to the reasoning and citations of authority set forth in the Magistrate Judge's Second Supplemental Report and Recommendations (Doc. #976), as well as upon a thorough *de novo* review of the entirety of this Court's file and the applicable law, said Second Supplemental Report and Recommendations are adopted in their entirety. Defendant's Objections said judicial filing (Doc. #996) are overruled.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

Defendant simply failed to show that the two prison lockdowns in questions, the last of which ended more than six months prior to the expiration of the one year period set forth for the Defendant to file his § 2255 Motion, had any effect upon his failure to file within the time fixed

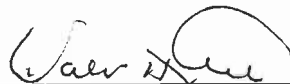
by law. Indeed, the conclusion is inescapable that the Defendant's failure to file in timely fashion is the result of a miscalculation of the due date of his filing.

WHEREFORE, based upon the aforesaid, this Court orders judgment in favor of the Plaintiff and against Defendant herein, dismissing Defendant's § 2255 Motion as time-barred, his claim of equitable tolling notwithstanding.

Given that the result reached herein would not be debatable among jurists of reason and, further, given that Defendant has failed to come forth with a substantial showing of the denial of a constitutional right, a Certificate of Appealability is denied. Moreover, given that any appeal of this Court's Decision herein would be objectively frivolous, Defendant is denied an anticipated motion seeking leave to appeal *in forma pauperis*.

The captioned cause is ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

August 14, 2014



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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record  
Daniel Garcia-Guia, *Pro Se*